

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JEFFREY W. PETTIT,

Plaintiff – Counterclaim-Defendant,

v.

Case No. 14-CV-01134

AERO MEDICAL PRODUCTS, CO., INC.,

Defendant – Counterclaim-Plaintiff

and

PAUL M. EGAN,

Defendant.

NOTICE OF REMOVAL

Defendants, Aero Medical Products Co., Inc. (“Aero Medical”) and Paul M. Egan (“Egan”), by their attorneys, O’Neil, Cannon, Hollman, DeJong & Laing S.C., hereby submits their Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446. In support of the removal of this action from the Circuit Court of Washington County, State of Wisconsin, to the United States District Court for the Eastern District of Wisconsin, Aero Medical and Egan states as follows:

1. This action was initiated by Plaintiff, Jeffrey W. Pettit, in the Circuit Court of Washington County, State of Wisconsin, and currently is pending in said Circuit Court as Case No. 14-CV-00494.

2. This action was filed by Plaintiff on July 2, 2014 asserting various claims against Aero Medical and Egan under state law that included alleged claims for: (i) Violation of

Wisconsin's Wage & Hour Laws – Wis. Stat. § 109.01 *et seq.*; (ii) Breach of Contract; and (iii) Retaliation in Violation of Wis. Stat. § 109.01 *et seq.*. On July 17, 2014, Aero Medical Products was served with the Summons and Complaint, which are attached hereto collectively as Exhibit A.

3. On August 6, 2014 Egan filed and served his respective Answer and Defenses (attached as Exhibit B) and Aero Medical filed and served its respective Answer and Defenses and Counterclaims (attached as Exhibit C).

4. On August 22, 2014, Plaintiff filed and served an Amended Complaint, which counsel for Aero Medical and Egan received on August 25, 2014, attached hereto as Exhibit D (the “Amended Complaint”) that alleged various federal and state law claims for: (i) Violation of the Fair Labor Standards Act – 29 U.S.C. § 201, *et seq.*; (ii) Retaliation under the Fair Labor Standards Act – 29 U.S.C. § 215; (iii) Breach of Contract; (iv) Conversion; and (v) Civil Theft.

5. The Amended Complaint, served on August 22, 2014, was the first pleading filed by Plaintiff that alleged claims under federal statutes providing this Court original subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and, as a result, Aero Medical and Egan was first able to ascertain on August 22, 2014 that this case is one that has become removable pursuant to 28 U.S.C. § 1446(b)(3).

6. On August 22, 2014, Plaintiff filed his Answer and Affirmative Defenses to Aero Medical's Counterclaims, a copy of which is attached hereto as Exhibit E.

7. On September 15, 2014, Aero Medical and Egan filed and served their respective Answer and Defenses to Plaintiff's Amended Complaint, attached hereto as Exhibit F and Exhibit G, respectively.

8. Neither Aero Medical or Egan have been served with any other process, pleadings or orders in this action other than those attached hereto as Exhibits A, B, C, D, E, F and G.

9. This notice is timely filed pursuant to 28 U.S.C. § 1446(b)(3), in that thirty (30) days have not expired since August 22, 2014, the date on which Aero Medical and Egan were served with Plaintiff's Amended Complaint that for the first time alleged questions under federal law.

10. Accordingly, based upon the reasons set forth, above, this Honorable Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331 because Plaintiff's civil actions alleged in his Amended Complaint assert claims arising under the Constitution, laws, or treaties of the United States, and, therefore, removal is proper pursuant to 28 U.S.C. § 1441.

11. This Court has supplemental jurisdiction over Plaintiff's state law claims alleged in his Amended Complaint pursuant to 28 U.S.C. § 1367(a), and, as such, the entire case is removable pursuant to 28 U.S.C. § 1441(c).

12. Upon the filing of this Notice of Removal, Aero Medical and Egan will provide written notice to counsel for Plaintiff, and Aero Medical and Egan promptly file a Notice of Filing of Notice of Removal with the Clerk for the Circuit Court for Washington County, State of Wisconsin.

WHEREFORE, Defendants, Aero Medical Products Co., Inc. and Paul M. Egan, provides Notice of Removal of this action from the Circuit Court of Washington County, State of Wisconsin, to the United States District Court for the Eastern District of Wisconsin.

Dated this 16th day of September, 2014.

**O'NEIL, CANNON, HOLLMAN,
DEJONG & LAING S.C.**

Attorneys for Defendants Aero Medical Products
Co., Inc. and Paul M. Egan

By: s/ Joseph E. Gumina
Joseph E. Gumina
State Bar No. 1001645
Joseph.Gumina@wilaw.com

P.O. Address

111 East Wisconsin Avenue, Suite 1400
Milwaukee, WI 53202-4870
(414) 276-5000 – Phone
(414) 276-6581 – Fax